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In re Application of
Jan Trebesius
Application No. 09/869,550
Filed: January 8, 2002
Attorney Dkt. No: (H) 011CP0235USP

OFFICE OF PETITIONS

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed July 9, 2008. This decision corrects the decision mailed on October 27, 2008.

The petition to withdraw the holding of abandonment is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This above-identified application was held abandoned for failure to timely file a response to a final Office Action which was mailed on May 3, 2005. The final Office Action set a three (3) month shortened statutory period for reply. A reply in the form of an RCE, amendment, abstract, specification, request for three month extension of time and a credit card authorization was submitted. A Notice of Requiring Excess Claim Fees was mailed on November 30, 2005. Accordingly, this application became abandoned on November 4, 2005. A Notice of Abandonment was mailed on September 20, 2007. A petition filed under 37 CFR 1.181 was dismissed on May 19, 2008.

Petitioner asserts that a reply to the final Office Action was timely submitted on November 3, 2005. Petitioner maintains that a general authorization to charge deposit account 11-0665 was submitted on filing. Thus petitioner maintains the \$10.00 shortage should have been charged to the deposit account. Petitioner has provided evidence that \$10.00 was present in the deposit account in November 2005.

Although petitioner has provided an explanation as to the delay in submitting the first petition to withdraw the holding of abandonment, petitioner has failed to indicate why a

response to the Notice Requiring Excess Claim Fees mailed November 30, 2005 was not timely submitted. The time for petitioner to make arguments that a deposit account was available to charge any shortfall in the fees was upon receipt of the Notice Requiring Excess Claim Fees. The failure to respond to the Notice would not allow for the withdrawal of the holding of abandonment.

To the extent petitioner contends that the Notice Requiring Excess Claim Fees was not received, petitioner must establish non receipt.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner. The statement should also describe the system used for recording an Office action received at the correspondence address of record and establish that the docketing system was sufficiently reliable;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and
3. a copy of the master docket for the firm docket record where the nonreceived Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement. If no master docket exists, the practitioner should so state and provide other evidence such, as but not limited: to the application file jacket, incoming mail log; calendar; reminder system or individual docket record for the application in question

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

PETITION UNDER 37 CFR 1.137(b)

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the excess claim fee , RCE and amendment, (2) the petition fee of \$770 , and (3) an adequate statement of unintentional delay.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.

This application is being referred to Technology Center AU 3627 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.



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Petitions Attorney
Office of Petitions